

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

RAYMOND HOLMES,

Plaintiff,

-against-

1:05-CV-1543  
(LEK/GJD)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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**DECISION AND ORDER**

**I. Background**

Plaintiff Raymond Holmes (“Plaintiff”) filed a Complaint appealing a decision by the Commissioner of Social Security (the “Commissioner”) in this matter on December 9, 2005. See Compl. (Dkt. No. 1). The Honorable Gustave J. DiBianco, United States Magistrate Judge, granted Plaintiff’s application to proceed *in forma pauperis* and denied Plaintiff’s request for appointment of counsel. Dec. 2005 Order (Dkt. No. 4). On May 16, 2006, the Commissioner answered Plaintiff’s Complaint; Plaintiff was required to file a brief in response by June 30, 2006. See Answer (Dkt. No. 9). Plaintiff did not file a brief by the deadline, and, on September 21, 2006, Judge DiBianco ordered the Commissioner to file a brief setting forth her position within sixty (60) days from the date of his order. Sept. 2006 Order (Dkt. No. 11). Additionally, Judge DiBianco allowed Plaintiff to file a brief in response within thirty (30) days after service of the Commissioner’s brief. Id. Subsequently, the Commissioner requested an extension of time until January 19, 2007, which Judge DiBianco granted. Nov. 2006 Order (Dkt. No. 14).

On January 18, 2007, the Commissioner filed a Suggestion of Death under Federal Rule of Civil Procedure 25 notifying the Court that Plaintiff died on December 20, 2005. Suggestion of Death (Dkt. No. 16).

## **II. Discussion**

Pursuant to Federal Rule of Civil Procedure 25(a)(1), a motion for substitution must be made no later than ninety (90) days after a suggestion of death is filed in with the Court and properly served. See FED. R. CIV. P. (25)(A)(1). If no motion for substitution is made within the ninety-day limit, the action will be dismissed as to the deceased party. Id. The Commissioner filed a Suggestion of Death with the Court on January 18, 2007. Suggestion of Death (Dkt. No. 16). The Suggestion of Death was properly served on Plaintiff's estate by regular mail at the address listed for Plaintiff on the Court's docket. See Certificate of Service (Dkt. No. 16, Attach. 2). No motion for substitution has been filed with the Court and more than ninety (90) days have now passed since the Suggestion of Death was filed on the record. Any motion for substitution filed with the Court now would be untimely; therefore, the Court dismisses this action in its entirety.

## **III. Conclusion**

Based on the foregoing discussion, it is hereby

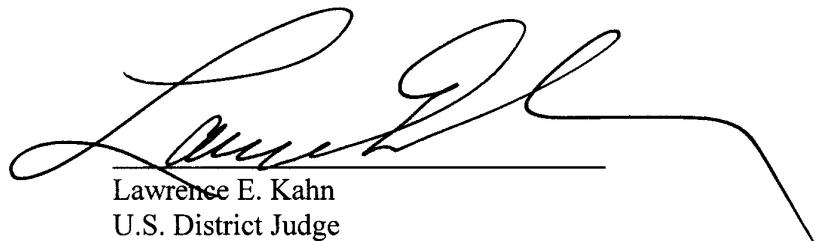
**ORDERED**, that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED**; and it is further

**ORDERED**, that the Clerk of the Court shall **CLOSE Case Number 1:05-CV-1543 (LEK/GJD)**; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: May 09, 2007  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge